

7.15 (17A,455A) Posthearing procedures and orders.

7.15(1) *Filing by parties of briefs and proposed findings.* Within 30 days after the last evidence is taken, each party may file with the presiding officer proposed findings of fact, conclusions of law, and a proposed order or decision complying with 7.15(2), and a brief in support of them. A copy of the document shall be served upon each other party. Each party may, within the same period, file with the presiding officer a brief concerning any relevant matters at the hearing. Within 20 days thereafter, each party may file a brief which takes specific exception to matters contained in an opposing brief or which contains alternative findings of fact, conclusion of law and proposed order. Briefing schedule, including waiver of briefs, shall be determined at the close of the hearing.

7.15(2) Final decision or order.

a. When the agency presides at the reception of evidence, the decision of the agency is a final decision.

b. When the agency does not reside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision or order of the presiding officer becomes the final decision or order of the agency without further proceedings unless there is an appeal to, or review or motion of, the agency within the time provided in 7.15(7)"a."

7.15(3) Decisions and orders.

a. By whom prepared. The presiding officer who presided at the reception of evidence shall prepare a proposed or final decision or order in each case. Findings of fact shall be prepared by the officer presiding at the reception of the evidence in a case unless the officer becomes unavailable. If the officer is unavailable, the findings of fact may be prepared by another person qualified to be a presiding officer who has read the record, unless demeanor of witnesses is a substantial factor. If demeanor is a substantial factor and the presiding officer is unavailable, the portions of the hearing involving demeanor shall be heard again or the case shall be dismissed.

b. Content of decision or order. The proposed or final decision or order shall:

(1) Be in writing or stated in the record.

(2) Include findings of fact. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of underlying facts supporting the

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findings. If a party submitted proposed findings of fact in accordance with 7.15(1), the decision or order shall include a ruling upon each proposed finding.

(3) Include conclusions of law, supported by cited authority or reasoned opinion.

c. Delivery. A copy of the proposed decision or order shall be delivered to the parties either by personal service or by certified mail, return receipt requested.

7.15(4) *The record.*

a. Content of record. The record shall include:

(1) All pleadings, motions and intermediate rulings;

(2) All evidence received or considered and all other submissions;

(3) A statement of all matters officially noticed;

(4) All questions and offers of proof and objections and rulings thereon;

(5) All proposed findings and exceptions;

(6) The decision, opinion or report by the presiding officer.

b. By whom prepared. The presiding officer shall prepare the record for each case.

7.15(5) *Appeal and review.* Any party may appeal a proposed decision to the agency having jurisdiction of the case. An agency may review any proposed decision in a case under its jurisdiction.

a. Time allowed.

(1) Appeal by party. An appeal by a party to the agency having jurisdiction of the proceeding shall be taken within 30 days after receipt of the proposed decision or order.

(2) Agency decision to review. Any agency may decide on its own to review a proposed decision, notwithstanding the absence of a timely appeal by a party. A decision to review

shall be made at the next regular meeting of the commission or by the director within 30 days following the issuance of the proposed decision or order of the presiding officer.

b. Notice. Appeal is taken and perfected by filing with the director a notice signed by the appellant or the appellant's attorney. It shall specify the parties taking the appeal and the final decision or order or part thereof appealed from. The notice shall set forth, with particularity, the conclusions of law or findings of fact appealed from. A request for a transcript or a copy of the tapes of a hearing on a matter appealed shall be made no later than at the time of the filing of a notice of appeal. The director shall mail or deliver a copy of the notice to the attorneys for all parties of record other than appellant, or to any party who has no attorney of record, at the party's last known address. No failure of the director to mail or deliver any notice shall affect the validity of the appeal.

c. Date of appeal or review. The director shall schedule appeal or review for a date after the end of the briefing period provided in 7.15(5)"e," and shall notify the parties of the date.

d. Agency review. On appeal from or review of the proposed decision, the agency has all the power which it would have in initially making the final decision except as it may limit the issues on notice to the parties.

e. Presentations by parties on appeal. Within 20 days of the date the appeal is perfected or the agency decides to review the proposed decision or order, each party may file exceptions and present briefs to the agency. Within 20 days thereafter, each party may file a brief which takes specific exception to matters contained in an opposing brief. Request for opportunity to present oral arguments shall be filed at least 10 days prior to the date set for consideration of the case. In cases where a regular agency meeting does not occur within the time limitation for final decisions or orders, the agency may shorten or extend the briefing period, provided that the briefing periods shall be at least 20 days before the date of consideration and not longer than would cause the date of consideration to occur later than the next regular meeting of the agency following any meeting that occurs sooner than the 20-day minimum briefing period.

f. Final argument. The final argument and the conclusion of the hearing is deemed to have occurred at the end of the briefing period, or when oral arguments have been permitted, at the end of the presentation.

7.15(6) *Applications for rehearing.*

a. By whom filed. Any party may file an application for rehearing.

b. Content of application. The application shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought.

c. Time of filing. The application shall be filed with the director within 20 days after the receipt of any final decision.

d. Notice to other parties. A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein.

e. Disposition. Any application shall be deemed denied unless the agency grants the application within 20 days after its filing.

7.15(7) *Stays of agency actions.*

a. When available.

(1) Any party appealing the issuance of an order, other than an emergency order which is governed by 7.17(17A,455A), may petition the presiding officer for a stay of the order pending its review. The petition for stay shall be filed with the notice of appeal (see 7.5(1) of these rules), and shall state the reasons justifying a stay.

(2) Any party adversely affected by a final decision and order may petition the agency which issued the decision for a stay of that decision and order pending judicial review. The petition for stay shall be filed with the director within ten days of receipt of the final decision and order, and shall state the reasons justifying a stay.

b. When granted. The presiding officer or agency, as appropriate, shall grant a stay when it concludes that substantial legal or factual questions exist as to the propriety of the department's order, the party will suffer substantial and irreparable injury without the stay, and the interest of the public will not be significantly harmed.

c. Vacation. A stay may be vacated by the issuing authority upon application of the department or any other party.

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EPA Rulemakings

CFR: 40 C.F.R. 70, Appendix A, Iowa (a)

FRM: 60 FR 45671 (9/1/95)

PRM: 60 FR 20465 (4/26/95)

State Submission: 11/10/93

State Proposal: N/A

State Final: IAC 9/7/88 (Effective 10/12/88)

PLDE File: IA-36

Description: EPA approved a new chapter "Rules of Practice in Contested Cases." This chapter governs procedures in contested cases generally including appeals of administrative orders, appeals of license or permit conditions, license or permit denials or suspensions. This chapter was approved in conjunction with Title V rules.

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Difference Between the State and EPA-Approved Regulation

None.